DOCUMENT RESUME

ED 249 300 UD 023 751

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TITLE Federalism, Ethnicity, and Affirmative Action in Nigeria.
PUB DATE May 84
NOTE 44p.; For conference proceedings, see UD 023 748.
PUB TYPE Reports - Descriptive (141) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Access to Education; *Affirmative Action; Educational Opportunities; Ethnic Discrimination; *Ethnic Groups; Foreign Countries; *Government Role; Justice; Political Attitudes; Postsecondary Education; Social Discrimination; *Social Integration
IDENTIFIERS *Nigeria

ABSTRACT

Within a framework of consociational theory, this paper discusses affirmative action policies used in Nigeria to cope with its heterogeneous ethnic composition. An introduction articulates the paper's basic assumptions and themes; the view is taken that political systems are forms of political technology, designed to achieve specific purposes. The paper begins by clarifying such concepts as federalism, ethnicity, and affirmative action. Then, ethnic heterogeneity is discussed as an inherent design problem for the Nigerian polity. Elements of consociational pluralism, defined as an arrangement of structures and institutions for dealing with ethnic pluralism, are outlined. Basically, these structures and institutions are said to require the proportional representation of all groups within government, with each group nonetheless retaining a high degree of autonomy to run its own affairs. This model of consociation is then related to ethical questions about the moral rights of groups and fairness and justice in selection criteria for affirmative action policies. The next section, examining Nigerian political history since 1960, focuses on institutional strategies used to promote power sharing and social integration. Nigeria is held to be a society of ethnic groups rather than individuals. The particulars of affirmative action in Nigeria are described in the following section, with special attention given to the issue of access to university education. In conclusion, affirmative action in Nigeria is compared to that in the United States. (KH)

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FEDERALISM, ETHNICITY, AND AFFIRMATIVE ACTION IN NIGERIA

by

L. Adele Jinadu

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INTERNATIONAL PERSPECTIVES ON AFFIRMATIVE ACTION

A Bellagio Conference

August 16-20, 1982

The Rockefeller Foundation

May 1984

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L. Adele Jinadu

> By what means, then, are we to move men's hearts and bring them to love their fatherland and its laws? Dare I say? Through the games they play as children, through institutions that, though a superficial man would deem them pointless, develop habits that abide and attachments that nothing can dissolve.
>
> Jean-Jacques Rousseau, The Government of Poland

I

Introduction: Basic Theoretical Assumptions

Rousseau's problem is nowhere more acutely posed than in multiethnic polities. I want to explore, from a broad theoretical framework provided by consociational theory, the strategic utilization of affirmative-action-type policies in Nigeria to cope with citizenship problems created for the Nigerian polity by its heterogeneous ethnic composition. In the last section, I offer some conjectural comparisons of the Nigerian and United States experiences with the implementation of affirmative action policies.

I start with the assumption that constitutional forms are important and relevant for citizenship and managing political conflict. My basic theoretical assumption is, therefore, that political systems are forms of political technology, designed to achieve specific purposes. This derives from the Aristotelian notion of the constitution as an ethico-legal device that stipulates techniques like institutions, political structures, decision-rules and policies for achieving certain ends at which the polity aims. Viewed in this way, affirmative action is one of the alternative techniques or strategic decision-rules and policy options for dealing

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In revising this essay, I took advantage of useful comments and searching questions by Sam Oyovbaire of Ahmadu Bello University, Zaria, and Donald McHenry of Georgetown University, Washington, D.C. Essay copyright 1982 Columbia School of Law and L. Adele Jinadu.

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with problems of governance created by the dialectical relationship between federalism and ethnicity in Nigeria.

Another theoretical assumption is that affirmative action reflects a strategic shift from as well as a modification of the liberal theory of the state. Affirmative action accepts the validity of group rights and thus impliedly rejects the liberal faith in the political marketplace as an open and competitive one for reconciling or arbitrating individual interests. In the case of Nigeria, this leads to the proposition that affirmative action policies partly reflect a lack of faith in institutions based on the liberal theory of the state to resolve socioeconomic and political competition in the country. This is partly because one important feature of affirmative action policies is that they are generally designed to protect and therefore make justiciable the rights of ethnic groups.

The following questions are pertinent to the elaboration of these assumptions: What is affirmative action? What objections have been raised against it? What is its justification in Nigeria? What is the legitimate scope of affirmative action policies in the country? Are considerations relevant to affirmative action elsewhere, say in the United States, also relevant to the Nigerian situation?

These and other questions will be considered in the wider context of the relationship between federalism, as a limited form of consociationalism, ethnicity, and affirmative action in Nigeria. Moreover, the questions cannot be isolated from interesting considerations of the problematic nature of the interaction of political structures and institutional arrangements on the one hand, with political processes on the other hand; especially relevant is how the interaction is translated into policy choices and outputs. For example, a much more explicit constitutional guarantee of affirmative action in the 1979 Constitution than was the case before in Nigeria may be indicative of a disjunction between political processes and institutional arrangements. Affirmative action as a policy choice, reflected in constitutional provisions, will therefore represent an attempt to come to grips with the disjunction.

II

Conceptual Clarification

I now attempt to clarify and give operational meaning to federalism, ethnicity, and affirmative action. I use these terms stipulatively in the following way. Federalism, as a form of political structure or institutional arrangement, is a system of concurrent regimes based on a constitutionally guaranteed division of powers and competence--legislative, executive, and judicial--shared by at least two levels of government. The aim of the arrangement is to avoid the concentration of powers in one plane of government. I argue later that federalism, so defined, is a special and limited type as well as method of consociationalism.

Ethnicity, as an aspect of political process as well as a form of political structure, refers to cleavages based on primordial attachments like language, religion, nationality, and race. It therefore refers to a particular type of social diversity or pluralism whose significance, especially in multiethnic societies, is that it provides a basis for pursuing corporate (i.e., ethnic) socioeconomic interests within a polity.

Since scarcity is necessarily a human predicament, ethnicity tends to be a crucial and critical source of political and other kinds of social conflict in such a polity. This may be owing to its being used as a relevant criterion for access to, or denial of access to, the consumption of public and private goods and for the allocation of political rewards. It is in this sense that ethnicity, as an aspect of the social structure of federalism in Nigeria, as elsewhere, has not only had an impact on but can also be regarded as an important aspect of political processes in the country.

Affirmative action, as policy choice, refers to redistributive measures or programs intended to favor ethnic groups that have been placed, either through conscious or unconscious design by others in the past, in a "disadvantaged" or "uncompetitive" socioeconomic and political position relative to other ethnic groups. Affirmative action measures, therefore, typically accept the validity of group as opposed to individual rights and generally involve important shifts in selection criteria for

the enjoyment of such measures from merit to reform and desert. It is in this sense that affirmative action represents a policy choice dictated by the effect of the structure of ethnic relations on political process in Nigeria.

At least five categories of affirmative action programs have been identified.[1] First, there are measures designed to eliminate barriers such as overtly discriminatory rules of an institution, especially when such rules deliberately deny access to particular ethnic groups. Second, another set of affirmative action measures is targeted on hidden biases in the access routes of disadvantaged ethnic groups to institutions. A third category seeks to remove fundamental system bias against some ethnic groups inherent in the basic institutional and structural arrangement of a polity.

Fourth, there are "reverse discrimination" measures that allow disadvantaged ethnic groups access to institutions by admitting more of their members than would have been admitted through competitive selection processes. Fifth, there are measures aimed at providing representation for disadvantaged ethnic groups in proportion to their numbers in the general population.

I shall make clear later how affirmative action measures in Nigeria arose out of the demand of minority ethnic groups in the 1950s. These measures have generally fallen within the fourth and fifth categories of affirmative action enumerated above.

III

Ethnicity, Consociational Pluralism, and the Polity

Ethnic heterogeneity is a pervasive feature of the contemporary world system. David Nicholls has argued that "the relationship between political unity and social diversity continues to be of central importance in many parts of the world. Homogeneous states, where each citizen belongs to one integrated set of institutions in a single community, are fast disappearing."[2] Arend Lijphart has given wide currency to the notion of consociational pluralism as an institutional and structural

principle of political organization that can be used to regulate political and other forms of competition in ethnically heterogeneous societies.[3]

I follow Lijphart in using consociational pluralism to refer to a set of structural and institutional arrangements for dealing with problems posed for a polity by ethnicity. But with respect to Nigeria, I add the proviso that there is need to view consociational pluralism (and therefore ethnicity) in the context of political competition among the political class and the low level of subjective class consciousness among the Nigerian working class and peasantry.

Ethnicity, therefore, poses an inherent design problem for the Nigerian polity. This is how to constitute a polity in which the associating ethnic groups will combine together in pursuing collective, i.e., national, goals without alienating their respective individual ethnic characteristics. Put differently, the problem is whether and if so, to what extent, the rights of ethnic communities for separate existence should be given constitutional and institutional recognition.

The problem is not only whether ethnic communities as such have rights that should be recognized, but also whether the institutionalization and protection of ethnic differences as a short-term strategy will not in the long run militate against national unity or integration. While the first question is essentially a theoretical question, the latter question is both theoretical and empirical in its focus on the conditions that will ensure unity.

I hasten to emphasize that not all multiethnic societies are consociationally plural or have adopted consociational arrangements to deal with the ethnic problem. In Africa, for example, the unpopularity of the federal solution as a consociational arrangement is not unconnected with the belief that it encourages regionalist and separatist tendencies, which "new" nations can ill afford.

IV

Elements of Consociational Pluralism

I now want to indicate basic elements of a consociationally plural

polity. In doing so, I follow the usage of Lijphart and later apply it in a modified form to examine the operation of limited consociationalism in Nigeria's federal government. This modification is that, as I have already suggested, we view consociational pluralism in Nigeria, and indeed elsewhere, in the context of intraelite competition for power and, particularly in the case of Nigeria, the low level of the subjective class consciousness of the Nigerian working class and peasantry.

What are these basic elements? Lijphart has identified four such elements. First, and most important of all, is "government by a grand coalition of the political leaders of all significant segments of the plural society." Second, there is "the mutual veto" or "concurrent majority rule," which serves as an additional protection of vital minority interests. Third, there is acceptance of "proportionality as the principal standard of political representation, civil service appointments, and allocation of public funds." Fourth, there is "a high degree of autonomy for each segment to run its own internal affairs."[4] These four elements, particularly the third element, suggest that a consociational polity will be predisposed to affirmative-action-type measures.

Lijphart's elaboration of these four elements suggests at least two operational or strategic consequences of a consociational arrangement. First, the logic of the arrangement impels the various ethnic groups to seek alliances and support from outside of their respective groups. This is the more so in situations of competitive party politics. Secondly, premium tends to be placed on the politics of compromise. There is a limit to which any ethnic group can legitimately advance its claims or engage in brinkmanship, and beyond which the polity may disintegrate.

This concern with compromise is closely linked to the interrelated issues of the possibility for separatist tendencies (e.g., demand for more states or secession) in consociational arrangements and the "balance of advantage" in the polity. Thus viewed, the issue is not simply one of ethnic representation but one of domination. This much is clear from the recent political histories of Nigeria, Sudan, and Iraq.[5] Affirmative action might thus be viewed as a compromise policy measure in such

circumstances. The effectiveness of cross-cutting political competition and the politics of compromise is therefore crucial for a consociation. It may provide a criterion for distinguishing between stable or unstable consociational polities. However, the issue of effectiveness is partly related to the issue of physical size and population. The preponderance of one ethnic group or a combination of them perpetually coalesced will result in their monopolization of politics. This will correspondingly give rise to uncompromising attitudes toward other ethnic groups.

Rousseau had expressed concern with the relationship of size to citizenship and, in spite of his distaste for sectionalism, had argued that "if there are partial societies, it is best to have as many as possible and to prevent them from being unequal."[6] John Stuart Mill, writing about federal systems much later than Rousseau, made the same point; and what Billy Dudley has described as "Mill's Law of Instability" in federal systems can be used to explain the collapse of Nigeria's First Republic (1960-66).[7]

This means that we need to relate the population size issue to the consociational principles of "mutual veto" and "grand coalition" in decision-making on matters of common or national concern. Although there may be no logical or analytical connection between consociationalism and federalism, and although the temptation to use the two terms interchangeably should be avoided, what the foregoing discussion suggests is that there is a strong and close connection between them. The suggested connection is that federalism is not only a special and limited type but also as a method of consociationalism; and that consociationalism is generalized federalism.[8]

V

Consociational Pluralism and Ethical Issues of Public Policy

Before examining Nigeria's federalism as a limited consociational polity, I want to refer to some ethical issues of public policy that are inherently and unequivocally posed by consociational theory and affirmative action. These issues have been much more starkly posed in recent

Nigerian discussion of the "federal character" concept than at any other time in the country's postcolonial political history. This way, one can examine the case for and against affirmative action as a policy response to ethnically generated demands on the Nigerian polity.

Two ethical issues are relevant. First, it is problematic whether there are properly speaking group as opposed to individual rights and interests. If it is proper to speak of group rights, this also raises the question whether such rights ought to be recognized as moral rights guaranteed and protected by the constitution and public policy measures as legal rights.[9]

The other ethical issue touches on principles of justice and fairness. It concerns selection criteria that should be used for the determination of a variety of public goods ranging from appointment to public offices, access to public institutions, and the allocation and distribution of public resources. This is particularly problematic insofar as the broad goal of public policy is to ensure equality among groups, defined as ethnic groups, and enable them to preserve their separate and distinct identities. The issue of affirmative action, defined for example as reverse discrimination or reparations as well as the alleged antinomy between merit and representation, is part of this wider issue. The two issues raise wider issues of social goals and social utility, especially what type of polity is to be created and the consequences of the preference of one value over another to the achievement of such a polity.

With respect to the first issue, I find Van Dyke's forceful argument that the liberal conception of human rights as individual rights is unduly limited a useful point of departure. As he points out, the liberal emphasis on individualism not only leaves liberals without an adequate theory of the state but also runs counter to historic precedents and contemporary practices that underline the fact that ethnic groups, among other groups, have moral and legal claims and rights that are and ought to be recognized and satisfied.

In the case of Nigeria, I have argued elsewhere that "the nature and particularly the structure of British colonial administration

encouraged the development . . . of a theory of federalism based on a theory of nationalities or ethnic groups. The writings of Nigerian federalists tended to place emphasis less on Nigeria's federal qualities, as such, than on her heterogeneous ethnic mosaic."[10] There are at least two dimensions to this theory of federalism.

First, there is the strategic dimension that justifies federalism as a method of dispersing power and preserving ethnic autonomy and identity. Second, there is an economic dimension that sees federalism in terms of the equalization of the access of particularly the emergent petit-bourgeois leadership of these ethnic groups to public goods and their active and meaningful involvement and incorporation into the country's socioeconomic life. This is why I suggest that Nigeria's federalism is a limited form of consociationalism, much more similar in this respect to Yugoslav than U.S. federalism.

While the concern of articulate Nigerian political opinion with group rights was couched in this federalist or consociational language, it also must be realized that the language and therefore the justification of Nigerian nationalism, as indeed of African nationalism in general, was less an individualist than a group one. Independence was claimed, as both a moral and legal right, obviously not for individuals (although in a sense it is reducible to such a claim), but for a nation, subgroup of it, or a group of nations.

If there is no a priori reason for rejecting the moral and legal rights of ethnic communities, then there seems to be a theoretical or philosophical justification for some of the elements on which federalism as limited consociationalism rests. These are the principles of grand coalition, concurrent majority, and segmental autonomy. The principle of proportionality also rests on this theoretical basis insofar as it relates to the promotion of ethnic group interest, although it poses another set of theoretical problems, arising out of its being used as a criterion of selection, appointment, and allocation of public funds.

This leads to the second ethical issue of public policy posed in this section. This is a more controversial issue than the first one,

although both issues are interconnected. This is because once we concede that ethnic groups have moral and legal rights and claims, we cannot avoid a question of applied ethics in cases where, as a result of conscious or unconscious design, some ethnic groups have been placed in a disadvantaged socioeconomic position relative to other ethnic groups. The ethico-practical question in such circumstances is, Should this situation of inequality be "reversed" or changed? Even if it is conceded that there ought to be a reversal, this in itself does not settle or resolve the question of which redistributive or compensatory criteria to adopt. I have suggested that it is the implementation of policies based on these redistributive criteria that is often referred to as affirmative action.

VI

Consociational Experiments in Nigeria Since 1960

To what extent has the Nigerian polity since independence in 1960 exhibited consociational elements? How are these elements related to affirmative action? These questions are best answered by dividing Nigeria's political history since 1960 into three periods: October 1960 to February 1966; February 1966 to October 1979; and since October 1979. This periodization should indicate not only some aspects of the dynamics of the consociational experiment in Nigeria but also the extent to which constitutional provisions to protect ethnic rights are translated into affirmative action policies.

During the October 1960-February 1966 period, only two consociational elements were explicitly incorporated into the 1960 Independence Constitution and the 1963 Republican Constitution. These were the mutual veto and segmental autonomy. These two constitutions contained a mutual veto in providing for an upper chamber, the Senate at the center, with equal representation from the three (later four) regions in the country. But this veto was not an effective one not only because the Senate could not delay legislation for more than six months but also because it was a "dignified" chamber. In design, the Senate was not meant to compete with

the Federal House of Representatives, which had a more preeminent legislative role. Much the same is true of the second chamber, the House of Chiefs at the regional level.

The 1960 and 1963 Constitutions were federal constitutions. The distribution of legislative powers contained an exclusive federal list and a concurrent list, with the residue left to the regions. This distribution underlines the strength of the desire to entrench and safeguard segmental autonomy. However, both Constitutions also reflected what can be described as a trend toward federal preeminence in the legislative field in federal systems. For example, Sections 64 to 67 of the 1960 Constitution and Sections 70 and 71 of the 1963 Constitution conferred on the center the power to invervene in the conduct of regional governments under certain circumstances and conditions.

The presence of these sections raises the question whether the 1960 Constitution, like the Indian Constitution, would not be better described as quasi-federal. As it turned out, the center exercised its emergency powers under Section 64 and 65 of the 1960 Constitution when, in May 1962, it declared a state of emergency in the then Western Region, suspended the governor, the legislature, and the executive of the region and appointed a federal administrator in their place.

The emergency provisions and their application in May 1962 therefore suggest that, properly speaking, Nigeria during that period could not be regarded as a consociational polity. But segmental autonomy in consociational theory is not meant to be absolute autonomy. The unitary feature implied in the conferment of emergency powers on the center, though such powers could be abused, was intended to deal, by definition, with abnormal situations.

The issue of segmental autonomy during this period (1960-66) of Nigeria's political history was problematic in another respect. This is because the three (later four) regions were not ethnically homogeneous. Each, especially of the original three regions, contained significant ethnic minorities that, even before independence, staked claims for their

own separate regions. This heterogeneous mosaic mix within each of the regions during this period was further complicated by two factors. First, owing to migratory and other ecological forces, the "nation" or ethnic group is not necessarily, in the Nigerian case, coterminous with state territorial boundaries. Secondly, within each of the numerically superior ethnic groups in each of the regions, there are also significant differences.

The issue of granting segmental autonomy to more ethnic groups was vigorously debated in the penultimate years before independence, especially since regional ethnic minorities were afraid that they would be perpetually dominated by the majority ethnic groups in their regions.

The solution adopted in the 1960 Independence Constitution to protect minority ethnic groups was twofold. First, a list of fundamental rights was included in the Constitution to guarantee and protect the political, civil, cultural, religious, and educational rights of minority ethnic groups within the regions. Secondly, a number of institutional and constitutional arrangements were designed to protect ethnic minorities. On the one hand, Section 27 of the 1960 Constitution and section 28 of the 1963 Constitution sought to ensure fair representation of ethnic minorities in the public services of the regions, by protecting members of such groups from disabilities that might arise out of "the practical application of any law in force in Nigeria or any executive or administrative action of the Government of the Federation or the Government of a Region . . . to which citizens of Nigeria of other communities . . . are not made subject."

These provisions, designed in response to minority ethnic group demand for segmental autonomy in the 1950s, represented a basic acceptance of affirmative action as a policy measure to contain ethnic assertiveness. Intergovernmental agencies, such as the Niger Development Board, were established to ensure the socioeconomic development of minority ethnic groups' areas. It was the fears of these minority ethnic groups over possible victimization by the majority ethnic groups that led to the deregionalization of the Nigeria Police Force and its

replacement by a single Federal Police Force administered by a Police Council with federal and regional representation.

As the history of demands for state creation in Nigeria has shown only too well, these constitutional provisions and institutional arrangements neither allayed minority ethnic groups' fears nor quelled the demand for more states. Why has this been the case? The basic problem is that the provisions and arrangements did not significantly affect the overall "balance of advantage" in matters of socioeconomic development and public service appointments in the regions during this period. Donald Horowitz's thesis might be applied with some force to the Nigerian experience: "If neither prosperity nor security is advanced significantly by remaining in a large multi-ethnic state, then it would not be surprising to discover an increase in the number of ethnic groups that choose to opt out."[11]

What about the other two consociational elements: grand coalition and proportionality? The period between 1954 and 1957 was one during which Nigeria began to operate a system of responsible government. The office of prime minister was introduced in 1957, and the cabinet formed in the last three years before independence (1957-60) was a coalition of the three main parties--the Northern Peoples Congress (NPC), the National Council of Nigeria and the Cameroons (NCNC), and the Action Group (AG), representing the Northern, Eastern, and Western regions respectively. The idea was to present a united national front in the critical last years of colonial rule and to involve the three regions and by implication the ethnic groups that correspond to them in government at the center.

This leads to the issue of proportional representations in allocating ministerial, civil service, and other appointments during this period. Section 88 of the 1954 Constitution provided for the appointment of three ministers from each of the three regions and one from the Southern Cameroons. As a result, six ministers were nominated by the NCNC, which won a majority of the seats in the 1954 federal parliamentary elections in each of the Western and Eastern regions. Three ministers were nominated by the NPC, which had a majority in the Northern Region.

The provision was, however, deleted at the 1957 constitutional conference and was not included in the 1960 Constitution. However, there was during the 1960-66 period an acute awareness of the need for a broad-based federal executive to reflect the regional balance in the country. Even after the controversial 1964 elections, which returned the NPC to power with an increased majority, the federal cabinet was made up of ministers drawn from the four regions. As Watts has observed of the new federations, "most constitution-makers have recognized and even stressed the importance of balanced regional representation in the executive. Nevertheless as a rule they have preferred to leave this to convention, in order not to restrict the flexibility implicit in the cabinet system."[12]

Balanced regional representation was, however, provided in the Constitution in a number of statutory-stipulated appointments. Reference has already been made to the Nigeria Police Council, which was established under the 1960 and 1963 Constitutions to supervise "the organization and administration of the Nigeria Police Force and all other matters relating thereto (not being matters relating to the use and operational control of the force or the appointment, disciplinary control and dismissal of members of the force)."[13] Each regional government, in addition to the federal government, was to be represented on the council.

The constitutional provisions for the establishment of the Supreme Court were also designed to ensure balanced regional representation. Section 104-(1) of the 1960 Constitution stipulated that the judges of the Supreme Court must include the chief judge of each of the regions, in addition to the chief justice of the federation and "such number of federal judges (not being less than three) as may be prescribed by Parliament." There was also a Judicial Service Commission made up of, in addition to both the chief justice of the federation as chairman, and the chairman of the Public Service Commission of the federation as a member, the chief judge of each region.

But the nature of regional representation was changed in the 1963 Constitution. Section 112-(1) provided that "the Chief Justice of Nigeria

and the Justices of the Supreme Court shall be appointed by the President, acting in accordance with the advice of the Prime Minister, so however that four of the Justices of the Supreme Court shall be appointed by the President, acting on the advice, as respects each of these Justices severally, of the Premier of a different Region."

However, with the exception of concern over representation of minority ethnic groups in the civil service, the 1960 and 1963 Constitutions did not extend the issue of proportionality to civil service appointments or admission to federal institutions. But, even then, there were during this period manifestations of what is now known as the "federal character" concept. In civil service appointments at the federal level, for instance, there was suspicion among Southerners, beginning from the early 1960s, that criteria other than merit were being used in the appointment and promotion of Northern officers in the executive and administrative classes of the federal civil service, in supersession of more qualified Southerners. As for admission to federal institutions, some places were reserved annually from the late 1950s on the Higher School Certificate class at King's College, Lagos, for qualified students from the Northern Region.

Let us turn to the 1966-79 period, which was one of military rule in Nigeria. To what extent was Nigeria consociational during this period? This question would seem superfluous since it was, by definition, a period of no-party rule. The question then turns on the compatibility of military rule with some of the consociational elements. It is arguable that the centralizing nature of military organization, together with its hierarchical command structure, is a negation of segmental autonomy and federalism. As part of the effect of this hierarchical command structure, reference can be made to the appointment of state governors by the central authority, the federal government. However, this fact does not necessarily mean that for most of the period of military rule, Nigeria did not operate a federal system.

Indeed, Nigeria operated as a federal system, with limited autonomy for the regions or states, during almost the whole of the period, the

exception being a short period in 1966 (May to July) when an attempt was made by the regime of Major-General Aguiyi-Ironsi to introduce unitary government.

This suggests that we view federalism as a spectrum, with a highly peripheralized (or decentralized) form at one end and a highly centralized one at another end. Livingston's and Riker's notion of a federal spectrum combines a legalistic with a sociological process view of federalism. For instance, the fact of some substantial unitary features in Canada (e.g., the appointment of provincial lieutenant-governors and appointments to all important provincial judicial posts by the dominion or federal executive, and the investment of power of disallowance and veto in that executive) does not mean that Canada neither has a federal constitution nor a federal government. In Nigeria during the 1966-79 period, pressures for state or segmental autonomy made the system work as a federal one, in spite of military rule and suspension of parts of the 1963 Constitution.

It was during this period of military rule that more states were created in an effort to satisfy demands of minorities for autonomous states of their own. In 1967, the four-state structure inherited from the civilian regime was dissolved. It was replaced by a 12-state structure. The 1967 exercise was followed by another in 1976, when the 12-state structure was replaced by a 19-state structure.

It is a moot issue in Nigerian politics whether these two exercises had redressed the imbalance on which Northern political predominance was based. It is also problematic whether state boundaries can ever or should coincide with ethnic boundaries. The two exercises also raise questions about how an ethnic group is to be categorized or defined, not as a sociological or anthropological category, but as a basis or criterion for state creation. An underlying issue in all of this is whether ethnicity should be the only or principal criterion for state creation.

If we focus on the related consociational elements of grand coalition and proportionality, we shall find that the membership and composition of

both the Supreme Military Council and the Federal Executive Council included state representation. For example, state military governors were members of the Supreme Military Council, and these military governors had to concur with the decisions of the Supreme Military Council. This was a veto that was effectively used during the latter part of General Gowon's regime by the military governors to assert and protect their autonomy. The Federal Executive Council during this period also included at least one member, invariably a civilian commissioner, from each of the states.

To what extent have consociational elements been reflected in the Nigerian polity since October 1979? The 1979 Constitution represents an attempt to reconstitute the Nigerian polity to meet the needs of the country. To this end, emphasis was placed by the architects of the 1979 Constitution on the nature of decision-rules and mode of exercising the rules.

The result is what is in design a thoroughly consociational federal polity. What is more, the idea of a consociation was extended as much to the federal level as to the state and local government levels. In other words, the home rule notion underlying federal-state relations was extended to state-local government relations. This was the underlying design strategy of a majority of the Constitution Drafting Committee to the problem of how to promote unity in a segmented or multi-ethnic society.

The key to this strategy is the notion of a "federal character." Constitutional provisions on the structures and institutions of the polity basically rest on this idea. But how novel is the notion? In a sense it is not novel, insofar as it can be said to mean "ethnic balancing," which it must mean if it is defined in operational terms. This operational definition suggests that the federal character notion is an instrumental one. It is instrumental in the sense that it aims at ensuring unity in diversity. But in the context of the 1979 Constitution, it is novel. This is because, unlike the practice in the 1960 and 1963 Constitutions, ethnic rights are now spelt out and conferred

with the force of law and made legally enforceable. In other words, what was previously left to convention is now part of the laws of the country.

If operationally defined the notion has the strategico-legal aim of achieving unity in diversity, how is this to be done? The answer is provided in Section 14 of the 1979 Constitution as follows:

> 14.(3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that government or any of its agencies.
>
> 14.(4) The composition of the Government of a State, a local government council, or any of the agencies of such government or council, and the conduct of the affairs of the government or council or such agencies shall be carried out in such manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation.

How do these provisions relate to the elements of consociational theory? Let us start with the notion of a grand coalition. Section 135(3) enjoins that appointment of ministers of the federal government by the president must conform to the provisions of Section 14(3), quoted above.

> Provided that in giving effect to the provisions aforesaid the President shall appoint at least one Minister from each State, who shall be an indigene of such State.

With respect to the state executive, Section 173(2) stipulates that appointments to the office of commissioners (i.e., cabinet members) of a state by the governor of that state must conform to Section 14(4) quoted above.

But it may not be easy to comply with these provisions or to determine what they mean or to reflect them in appointments to public offices. Alhaji Shehu Musa, secretary to the government of the federation, has highlighted some of the conceptual and practical problems of implementation posed by these sections:

> First and foremost, a citizen belongs to a State, then to a tribe (in the ordinary common sense,, to a religion and lastly to a Political Party. At the same time that very individual has a profession, has an occupation and belongs to one or more associations. In a two-dimensional matrix, say vacancies to be filled and state, the problems of implementation are minimal. But the provision "Federal Character" involves much more than vacancy/state relationship. If this were intended, I have no doubt that the makers of the Constitution would not have hesitated to use the expression "Geographical spread." . . .
>
> The trouble is with the provision for "other sectional groups"--political party inclination, occupation, profession, association, etc. . . . One interesting thing which has further complicated the setting up of operational rules for the purpose of reflecting "Federal Character" is that a person belongs to at least five elements, namely, State, Tribe, Religion, Party and either occupation, profession or association.[14]

The notion of a grand coalition was extended to a number of federal executive bodies listed in Section 140(1). These are the Council of State, the Federal Electoral Commission, the National Economic Council, and the National Population Commission.

The decision-rules about the election of the president provide a point of departure for examining the extent to which another consociational element, the mutual veto, is reflected in the 1979 Constitution. These decision-rules stipulate a greater-than-simple-majority vote. It therefore becomes imperative for a presidential candidate to seek as wide an ethnic and geographical base as possible for electoral support.

By making these decision-rules as all-inclusive as possible, a high degree of autonomy, and therefore a virtual veto, is reserved for the ethnic group. Section 126(1) states as follows:

> A candidate for an election to the office of President shall be deemed to have been duly elected where, there being only 2 candidates for the election--
> (a) he has a majority of the votes cast at the election; and
> (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation.

Similar provisions--Section 164(7)--are stipulated for gubernatorial elections. The successful candidate in each state is required to secure,

in addition to the highest number of votes cast, "not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the State."

A third consociational element is proportionality in public service appointments and in the allocation of public revenue among the component units of the federation. Section 157(5) of the 1979 Constitution stipulates that in making appointments to certain categories of offices in the public service of the country, "the President shall have regard to the federal character of Nigeria and the need to promote national unity." The offices are the secretary to the government of the federation, head of the Civil Service of the federation, ambassador, high commissioner or other principal representative of Nigeria abroad, permanent secretary or other chief executive in any ministry or department of the government of the federation, and any office on the personal staff of the president.

The "federal" character concept also applies to appointments to the chairmanship and membership of Boards of Directors of government parastatals. How has this concept been applied? When the 1979 Constitution came into effect on October 1, 1979, "one Permanent Secretary hailed from Imo, Rivers, Plateau, Gongola, Kano, Kwara, Cross River and Niger States."[15] Immediate steps were taken to bring this situation in line with the spirit of the federal character clause. Table 1 below reflects the distribution of the permanent secretary cadre by state of origin in May 1982.

As for appointments to chairmanship and membership of Boards of Directors of federal government parastatals, the emphasis has tended to be on geographical spread. But effort is also made "to ensure that all states have approximately equal representation on each category of Board and that there is no bunching in the area of chairman of the Boards or the membership."[16]

At the state level, the governor is similarly expected (Section 188[4]) to "have regard to the diversity of the people within the state and the need to promote national unity" in making appointments to certain officers in the State Public Service. Much the same consideration is

Table 1

Distribution of Federal Permanent Secretary in May 1982 by State of Origin

State	No. of Permanent Secretary	State	No. of Permanent Secretary
Anambra	2	Kwara	2
Bauchi	1	Lagos	2
Bendel	8	Niger	1
Benue	2	Ogun	1
Bornu	2	Ondo	2
Cross River	1	Oyo	2
Gongola	1	Plateau	1
Imo	1	Rivers	2
Kaduna	2	Sokoto	3
Kano	1		

expected to be given to appointments to chairmanship and membership of Boards of Directors of the parastatals of state governments.

The "federal character" notion is also extended to the composition of the officer corps and other ranks of the armed forces of the federation. In addition, Section 199 empowers the National Assembly by an act to "establish a body which shall comprise such members as the National Assembly may determine, and which shall have powers to ensure that the composition of the armed forces of the Federation shall reflect the federal character of Nigeria." This concern itself is not new, since recruitment and promotion practices in the Nigerian armed forces even before 1979 had generally taken the ethnic factor into consideration by aiming for some form of ethnic balancing.[17]

What about the allocation of public revenues among the various states? The issue of revenue allocation has always been a bone of contention in Nigeria. The contention is as much about the basis or principles

of allocation as it is about the quantum of allocation between the various levels of government.

Viewed as part of the federal finance problem, the revenue allocation issue is important because of the need to ensure that division of revenue between the federal government and unit governments not only corresponds to the division of constitutional functions but also does not compromise the autonomy of either level of government. The principles of allocation have varied over time, with prominence being given to derivation in the 1950s, need in the early 1960s, and equity and even development in the 1970s.

In order to ensure the financial autonomy of the various regions, the 1960 and 1963 Constitutions, in Sections 131-134 and 137-40 respectively, guaranteed unconditional transfers of revenue. A variation of unconditional grants stipulated in these Constitutions is the combined distributable pool. This term refers to the combined proceeds of a group of federal taxes, a certain minimum percentage of which is to be allocated as the share of the states and which is subject to variation by federal legislation. The tables below show the tax jurisdiction and allocation of revenue under the 1963 Constitution.

The constitutional allocation of revenue between the federal and state governments and the local government councils under the 1979 Constitution is contained in Sections 149-154 and in Items A and D of Part II, Second Schedule. The National Assembly and Houses of Assembly of the states are empowered within their respective subjects and areas of competence to prescribe the formula and manner of the allocation.

I have sought in this section to examine an aspect of Nigeria's political history with some pertinent bearing on the theme of this conference. I have thus focused not only on the bases or criteria for power sharing and social integration in Nigeria, but also on the philosophical or theoretical underpinnings of the Nigerian polity. I referred to institutional strategies used to promote, if not ensure, power sharing and social integration. I related these institutional strategies to the

Table 2

Tax Jurisdiction under 1963 Constitution

Federal	State
1. Import duties	1. Personal income tax (administration)*
2. Export duties	2. Sales and purchase taxes on produce and other commodities
3. Excise duties	3. Entertainment tax
4. Mining rents and royalties	4. Cattle tax
5. Petroleum projects tax	5. Football pools and other betting taxes
6. Companies' income tax	6. Capital gains (administration)
7. Personal income tax (legal basis)	7. Motor vehicle tax and driver's license fees
8. Capital gains tax (legal basis)	

Source: Federal Republic of Nigeria, Reports of Constitution Drafting Committee, vol. II, p. 132.

* Personal income tax (legal basis) originally under state jurisdiction was transferred to the federal government in 1975 while the administration and retention of revenue remained with the state. The same applied to capital gains tax.

Table 3

Allocation of Revenue under the 1963 Constitution

		Federal %	State %
I.	Import Duties		
	(a) Tobacco	-	100
	(b) Beverages--beer, wine, and spirits	100	-
	(c) Motor spirit and fuel	-	100
	(d) Other imports	65	35
II.	Export Duties		
	Produce, hides, and skins	-	100
III.	Excise Duties		
	Except tobacco and motor fuel	100	-
	Tobacco and motor fuel	-	100
IV.	Mining Royalties and Rents	15	85
		(35% only being through Distributable Pool Account.)	

Source: Federal Republic of Nigeria, Reports of the Constitution Drafting Committee, vol. II, p. 133.

Notes: (1) Decree No. 6 (1975) stipulated that 50% of all excise go to the federal and 50% to the state governments. (2) As of 1976, 20% of on-shore receipts was going to the state of origin and 80% to the Distributable Pool Account, while 100% of the off-shore receipts went to the Distributable Pool Account. (3) In 1970, the formula for sharing the revenues was changed to 50% of the Distributable Pool Account fund to the state on the basis of equality of states and 50% on the basis of population.

consociational elements of the grand coalition, mutual veto, proportionality, and segmental autonomy.

The adoption of these strategies, especially under the 1979 Constitution, is explicitly based on the acceptance of the claims of ethnic groups to moral and legal rights and interests. These strategies also involve a corresponding rejection of a single majoritarian polity based on one-man one-vote. In other words, the Nigerian polity is a society of ethnic groups and not of individuals. The justification of federalism as limited consociationalism in Nigeria is thus that, by recognizing these group rights, it should provide and perhaps ensure access to and meaningful participation in the economic and sociopolitical processes of the country by the various ethnic groups. It should conduce to stability and more egalitarian polity. It is no doubt problematic whether this justification conforms with political practice.

VII

The Nigerian Polity and Affirmative Action

The relationship between federalism as limited consociationalism and affirmative action in Nigeria is that the latter in a sense is dictated by the logic of Nigerian federalism. This is to say affirmative action is partly a policy measure designed in response to practical problems of governance posed by the conjunction of federalism and ethnicity in Nigeria. If Nigerian federalism cannot be understood without being situated in the context of the social structure of the country's ethnic relations, much the same can be said of affirmative action. By the same token, the justification for affirmative action in the country is to be sought in the justification for federalism, namely, in the end for which a federal arrangement is concluded.

If affirmative action typically involves a departure from conventional selection criteria and procedures in, for example, education and employment in order to secure group reparations, redistribution, and social integration, then what is its scope or extent in Nigeria?

The determination of "conventional selection criteria and procedures" is not unrelated to concern with justice and fairness. When applied to questions of admissions and appointments, for example, this concern can be reduced to the application of the merit principle. Thus, the relevant rules guiding admissions to educational institutions, for example, will accord preferential treatment to high scorers as against low scorers in the relevant tests administered. In such circumstances, considerations of ethnic, religious, or national origins are irrelevant. To introduce any of these considerations so that some low scorers are preferred over high scorers is unjust and unfair.

But the matter is not so easily disposed of, as the rules and the procedures for implementing them may be questioned. For example, strict compliance with test scores may historically have been used to keep or may have had the effect of keeping certain groups out of certain institutions. The evaluators or assessors may not be unbiased. In the Nigerian situation, this kind of argument has been used, particularly by Northerners, against the competitive nature of some nationally conducted examinations. Their argument is not only that evaluators exhibit cultural or ethnic bias, but also that some high scorers engage in examination malpractices.

The scale of merit used is not itself foolproof or unproblematic. There may also be systemic or structural factors that favor some groups, therefore placing them in a more advantageous position than others. In such circumstances, the requirement of distributive justice may demand some attenuation or dilution of the merit or "conventional selection criteria" principle. This in itself represents a justification for affirmative action measures to redress such a situation.

Moreover, it can be argued that there are other criteria that ought to be considered. For example, the emphasis may be on <u>need</u> as opposed to <u>ability</u>. The departure from ability or the merit principle is also justified on utilitarian grounds in terms of its beneficial social consequences.

Let us now look at the scope of affirmative action in the context of current policy on education at the federal level in Nigeria since

the 1970s, when the basic objectives of a national educational policy were laid down in the Second National Development Plan, 1970-74. The basic problem that this policy was designed to deal with is the educational imbalance, which is roughly on a North-South axis, in the country with the advantage lying with the South.[18] This particular imbalance was due partly to British colonial administrative practice, and also partly to cultural and religious factors that gave rise to differential responses to the diffusion of western education in the North and South.

But within the South, as within the North itself, there were pronounced imbalances and sizable pockets of educationally backward areas. The problem for which affirmative action as reverse discrimination or the adoption of a quota system is an answer is thus the eradication or mitigation of this kind of imbalance. Part of the justification for affirmative action is that to the extent to which the imbalance constitutes a barrier to national integration and even development, then conscious effort must be made to remove the imbalance. Affirmative action is thus justified as a measure to bring about the desired state of affairs. But affirmative action in education is viewed also as a means for achieving some equitable distribution of employment in the various sectors of the economy along ethnic lines. The socio-economic aim (as well as justification) is the broadening on an ethnic basis of the educated population in the country, or of the emergent petit-bourgeoisie.

In view of this sizable number of educationally backward or disadvantaged ethnic groups and states, a national educational policy on admissions to certain categories of federal educational institutions was worked out in the 1970s. The aim as well as the justification was (and is) to elevate the disadvantaged states to an equal status, such that candidates from those states can compete more effectively with the rest of the country. Policy therefore is aimed at bridging or narrowing the gap. This also constitutes its justification. But how is this to be done?

The answer seems to have been that, since their educationally disadvantaged position is partly a legacy of the past, then considerations of social justice demand that they should be offered special protection; otherwise , the educational gap cannot be bridged or narrowed in open competition, based purely or exclusively on the merit principle. It therefore becomes imperative to reserve a certain number of places for them in federal educational institutions. But it is unclear whether this is purely a stopgap, ad interim measure.

It is the pursuit of this deliberate policy that has generated heated controversy in Nigeria, as it has done in India and the United States, with respect to competitive examinations and admissions to law schools respectively.[19] As should be expected, the controversy has generated more emotional than reasoned analysis of the merits and demerits as well as the applied social-ethical aspects of the policy.

Although the 1979 Constitution stipulates that federal institutions, including educational ones, must reflect federal character in their composition, the policy as a deliberate one was consciously designed and pursued during the period of military rule. But even then, the idea was behind the establishment of the "unity schools" in all the regions of the federation in the early 1960s. It was during this period that the King's and Queen's Colleges in Lagos, established during colonial rule, also began to reflect federal or national character in their admissions policy. What was the character of the policy as applied to the secondary and tertiary levels of Nigeria's educational system, i.e., secondary, teacher training, technical, and university education?

The present admission policy guidelines into all the federal government colleges and federal government girls' colleges in the 19 states are as follows:

19 federal government colleges	20 percent national merit 50 percent state quota 30 percent environmental quota
19 federal government girls' colleges	

schools which are located in a few states and which as a result apply a different admissions guidelines, as follows:

7 federal schools of arts and sciences	20 percent merit
King's College, Lagos	80 percent state quota

Because of their location in a few states, the "environmental" criterion is not included, hence the corresponding increase in the state quota.

With respect to teachers' training colleges and federal polytechnics, the admission policy is the same as for the federal schools of arts and science for the same reason, namely, their location in a few states:

7 federal advanced teachers' colleges	
2 national technical teachers' colleges	20 percent merit
1 federal technical college (Trade Centre, Lagos)	80 percent state quota[20]

The application of the federal character concept to admission guidelines to federal government universities distinguishes between the "old" and "new" universities. Because of the vital importance of this level to manpower and developmental needs, and "in order to ensure an increased number of qualified students from the educationally less developed areas, the Federal Government assisted 11 states to establish schools of basic studies. It also requested 7 universities to run preliminary courses with intake from these areas."[21]

But the discussion of university education, as indeed of the other levels referred to above, cannot and should not be discussed in isolation from the question of the geographical spread or location of federal universities. The goal may be "to achieve an even spread in the economic benefits inherent in the establishment and operation of university institutions," although ". . . the creation of universities in line with the principle of federal character will improve the positions of those states with a large number of candidates for university education."[22]

The formulation of admission policy to federal government universities was based on the same assumption of the need to balance merit with need that characterized policy on the other levels of the educational system. The policy guidelines that were eventually formulated for the various federal universities were worked out after consultations between the federal government, the National Universities Commission, and the universities. During the 1981-82 selection exercise, the federal universities were requested to include, in addition to the merit criterion, such other criteria as factors of educational disadvantage, federal character, and catchment area in their admission.

The guidelines eventually laid down for each federal university are to be strictly applied, and the National Universities Commission has been directed by the president-in-council to work out a system of inducement grants and penalties for universities that comply or fail to comply respectively with the guidelines that apply to them. The guidelines laid down for each federal university are as follows.[23]

(a) Ahmadu Bello University

(i) 40 percent merit from all the 19 states of the federation;

(ii) 30 percent for students from the locality of the university;

(iii) 20 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(b) Bayero University, Kano

(i) 30 percent national merit from all the 19 states;

(ii) 30 percent for students from the locality of university;

(iii) 30 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(c) University of Benin

(i) 40 percent merit from all the 19 states of the federation;

(ii) 30 percent for students from the locality of the university;

(iii) 20 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(d) University of Calabar

(i) 30 percent national merit from all the 19 states;

(ii) 30 percent for students from the locality of the university;

(iii) 30 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(e) University of Ibadan

(i) 40 percent merit from all the 19 states of the federation;

(ii) 30 percent for students from the locality of the university;

(iii) 20 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(f) University of Ife

(i) 40 percent merit from all the 19 states of the federation;

(ii) 30 percent for students from the locality of the university;

(iii) 20 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(g) University of Ilorin

(i) 30 percent national merit from all the 19 states;

(ii) 30 percent for students from the locality of the university;

(iii) 30 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(h) University of Jos

(i) 30 percent national merit from all the 19 states;

(ii) 30 percent for students from the locality of the university;

(iii) 30 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(i) University of Lagos

(i) 40 percent merit from all the 19 states of the federation;

(ii) 30 percent for students from the locality of the university;

(iii) 20 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(j) University of Maiduguri

(i) 30 percent national merit from all the 19 states;

(ii) 30 percent for students from the locality of the university;

(iii) 30 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(k) University of Nsukka

(i) 40 percent merit from all the 19 states of the federation;

(ii) 30 percent for students from the locality of the university;

(iii) 20 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(l) University of Port Harcourt

(i) 30 percent national merit from all the 19 states;

(ii) 30 percent for students from the locality of the university;

(iii) 30 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(m) University of Sokoto

(i) 30 percent national merit from all the 19 states;

(ii) 30 percent students from the locality of the university;

(iii) 30 percent for students from educationally less developed states;

(iv) 10 percent others; to be left to the discretion of the university.

(n) The Federal Universities of Technology

(i) 20 percent from locality of the universities;

(ii) 80 percent to be left to the discretion of the universities. The universities are, however, enjoined to ensure that they admit their students from all over the country.

It should be clear from the various guidelines that the affirmative action considerations reflected in them are those relating to reverse discrimination and proportional representation. As I have pointed out earlier, the category of affirmative action designated as reverse discrimination is intended to allow disadvantaged groups access to institutions by admitting more of their numbers than would have been admitted through open competitive selection processes. But insofar as this is linked with the federal character concept, the consociational element of proportionality or quota is also an underlying rationale of affirmative action in education. But the consociational element of segmental autonomy is also implied in the criterion of environmental or catchment area factor, stipulated for admission to some of the institutions.

What needs to be pointed out, however, is that, even with respect to the state quota and environmental factors, the merit criterion is not ruled out altogether. This is because of the notion of national minimum standards that must be met before any candidate is admitted to any of the universities. There are basic requirements for admission at all levels of the educational system. This then means that at the state and "environmental" levels, the competitive merit competition

is to be applied. It is of course possible that some candidates who score lower than others may gain admission while some who scored higher than they may fail to gain admission.

But this is a problem with the application of the criterion and not necessarily with the criterion itself. It has to be realized that the merit criterion is not the only criterion. Nor is it error-proof in application. It is not unusual for admissions officers or "gatekeepers" to look at other than numerical indicators in processing application forms. For example, entrance examinations results are often complemented with interviews for admissions to secondary schools.

All that this underlines, however, is the need to reject too narrow a conception of merit which is limited to numerical indices. Additionally, it is a common experience that students with lower scores at the admissions stage sometimes end up with better results at the end of their course than those who had higher entrance scores. It is this experience that raises the question of the reliability of testing procedures.

All of this is not to suggest that the guidelines and their application are unproblematic. For example, the environmental or catchment area factor can be a vague admission criterion. Although the general idea is that it refers to the locality in which an institution is located, the geographical spread of the locality can be problematic. Consider the University of Lagos. What is its environment or catchment area? Some have argued that it should include the adjoining Ogun and Oyo states.

Even where the locality is clear, is the criterion to apply only to candidates who are indigenes of the state or to any student who resides and goes to school in that locality? How is indigeneity to be established? Are we to leave this to the discretion of "gatekeepers" to determine? What happens when the environmental or state quota is not filled: Again, is what should be done in such a situation to be left to the discretion of "gatekeepers"? Should there not be specific guidelines about what should be done in such a situation?

The guidelines also need to spell out how "educationally less developed states" (i.e., disadvantaged states) are to be determined. If this is

not to be left to the discretion of "gatekeepers," and therefore left open to arbitrariness or abuse, some objective indices will have to be spelt out and an annual list of such states compiled. The compilation of such a list will provide a basis for monitoring the effectiveness and impact of this type of affirmative action.

As I indicated earlier, the application of affirmative action has generated heated controversy in the country. While its supporters have generally justified it as a desirable agent of even development and national integration, its opponents have pointed to its unfairness. They have also argued that affirmative action encourages and rewards mediocrity. Its effect, it is further claimed, is in the long run likely to be counterproductive of national unity.[24]

The controversy, insofar as it touches on questions of applied ethics, is perhaps best resolved by casuistry. This consequentialist strategy will then not condemn affirmative action a priori. Rather, it will justify or condemn it in the light of its probable or actual consequences.

If, for example, it is claimed that affirmative action policies in Nigeria are not serving an integrative function and that their justification on that ground therefore loses its forces, the situation may be less owing to the policies themselves than to fundamental structural problems and weaknesses in the Nigerian polity. Merely to reject or abandon the policies will not resolve those problems, since the policies are not the cause, but are perhaps policy measures designed to cope with the problems.

Conclusion: Affirmative Action in Nigeria and the United States

I have attempted to explain the relationship between federalism, ethnicity, and affirmative action in Nigeria. My basic argument is that the recourse to affirmative action in Nigeria represents a strategic policy response to contradictions arising out of the ethnically generated demands on the Nigerian federal system during the period covered in this study.

It now remains to add that the formulation and implementation of affirmative action policies in Nigeria should be placed in a comparative context. This suggests that it should be viewed as an alternative political technology for dealing with ethnicity as an aspect of the social structure of federalism in some ethnically heterogeneous polities. The point of such comparisons is partly to indicate whether some culturally determined affirmative action measures adopted in one polity are more effective than others utilized elsewhere for dealing with structurally similar situations. It should also indicate whether such measures, by virtue of their being more effective, can be transposed from one national context to another.

A comparison of affirmative action in Nigeria and the United States should indicate whether considerations relevant to affirmative action in a developing country are also relevant in a developed country. The comparison is all the more worth pursuing because in Nigeria, as in the United States, the genesis of affirmative action arose partly out of ethnic assertiveness by ethnic minorities.

An important factor conditioning the nature of their affirmative action policies is the political histories of both countries, particularly their social and economic histories, and the character of the socio-economic inequalities that have emerged. With respect to the United States, there is the guilt feeling arising initially out of the social and economic consequences of deliberately and institutionally structured discrimination against various, especially nonwhite, ethnic minorities.

In Nigeria, affirmative action arose partly out of the need to correct certain categories of regional imbalances created by the character of colonial rule and differential ethnic responses to the diffusion of conventional western education. In this respect, the situation is one in which affirmative action is intended to favor a majority ethnic group, the Hausa-Fulani, for example, as a compensation for its historically determined educational disadvantaged position. This is a situation that is not strictly analogous to the United States experience. But affirmative action in Nigeria is also partly designed to cope with and

thereby prevent a situation in which the major ethnic groups, the Hausa-Fulani, Yoruba, and Igbo, tended to monopolize access to the distribution and enjoyment of public goods at the expense of minority ethnic groups. In this sense, there is some similarity with the genesis and intention of affirmative action in the United States.

The philosophical basis of constitutional arrangements provides another ground for comparing affirmative action in both countries. This comparison can proceed along two lines: the justification of affirmative action, and, secondly, its theoretical basis. In this way, similarities and dissimilarities in affirmative action between the two countries can be sought at the ideological level.

The justification offered for affirmative action is similar in both countries. It is justified in terms of the need to create a socially integrative polity and therefore stem the divisive and potentially explosive character of ethnically determined socioeconomic inequalities. This is an ex ante justification, put forward as a self-evident one, although it is problematic whether the removal or reduction of interethnic inequalities will of itself remove or reduce interethnic conflict. It is part of the effort to assess the impact of affirmative action in both countries to determine the extent to which it has reduced ethnic conflict.

The theoretical basis of affirmative action in both countries is dissimilar. In the United States, there is substantial debate about whether ethnic groups as such can and should have the kinds of rights conferred upon them by affirmative action measures. Moreover, in the United States, the constituent units were and are not territorially demarcated to coincide with ethnic boundaries. On the other hand, Nigerian federalism, unlike that of the United States, was predicated on a theory of ethnic nationalities, with specific constitutional provisions created to protect the socioeconomic and political rights of ethnic groups. Nigerian states were (are) basically and deliberately created to reflect ethnic composition of the country.

It is in this sense that the theoretical basis of Nigerian federalism is substantively different from that of the United States and very

much similar to that of Yugoslavia. This theoretical dissimilarity may explain why there have been landmark cases challenging aspects of affirmative action in the United States, whereas there is yet to be such a constitutional challenge in Nigeria.

However, the same tension between individualist and collectivist or group theories of rights that has characterized the United States debate on affirmative action is also evident in Nigeria. As I have suggested earlier, the debate has tended to highlight weaknesses inherent in the liberal theory of the state--its rejection of group as opposed to individual rights, its subscription to simple majoritarian rule, and its myth of the political marketplace as an open and competitive one for reconciling individual interests.

It is no doubt problematic whether the Nigerian measures discussed here can appropriately be tagged "affirmative action" measures. For example, it can be argued that the measures are strictly speaking not affirmative action ones but are the minimum contractual conditions for maintaining the Nigerian polity as one. On this view, affirmative action is a form of social contract without which the various ethnic groups will not agree to federate. Further illustration of this position is that the phrase "affirmative action" hardly features in Nigerian political discourse.

The comparative problem then is whether the same meaning is given to affirmative action in Nigeria and the United States. However, while the problem of meaning or conceptualization is important, one must avoid imposing conceptual nomenclatures utilized in one polity to describe a set of policy measures on similar sets of policy measures in other polities. One's focus should be less on the nomenclatures than on their conceptual equivalents.

The fact that the very notion of affirmative action is not part of the everyday language of political discourse in Nigeria does not mean absence there of policies which in the United States would be properly designated affirmative action ones. In the Nigerian context, especially since 1979, public policies and measures designed to achieve some of

the goals which affirmative action ones in the United States are targeted on have been premised on the "federal character" concept.

Operationally defined, this concept pertains to public policy measures specifically adopted to ensure ethnic balancing in such areas as appointments to public office, admissions to publicly funded educational institutions, the direction of state economic policies, and the provisions of socioeconomic services. In formulation and implementation, and in comparison to affirmative action in the United States, ethnic balancing in Nigeria falls into two of the affirmative action categories identified earlier on in this paper: reverse discrimination and proportional representation.

As for the social contract argument, what needs to be said is that what the dynamics of the political process in the United States has made clear is the need to rethink the rationale for maintaining it as a stable polity. Affirmative action considerations may not have entered into the calculations of the Founding Fathers of the United States, but what is clear now is that such considerations are vital to maintaining the polity and constitute part of the social contract in that country. This much is clear from the political and constitutional history of the country since the 1950s.

There is now a global concern with what Antony D. Smith has described as the "ethnic revival." This refers to the persistence of ethnicity as a salient feature of the contemporary state system. Whether it is in Nigeria, the United States, Yugoslavia, or elsewhere, affirmative action measures are designed as a policy response to the disintegrative potentiality of the heterogeneous ethnic composition of these countries.

NOTES

1. What follows is summarized from Fred M. Frohock, Public Policy: Scope and Logic, Englewood Cliffs, N.J.; Prentice-Hall, 1979.

2. David Nicholls, Three Varieties of Pluralism, London: The Macmillan Press, Ltd., 1974, p. 61.

3. Arend Lijphart, The Politics of Accommodation: Pluralism and Democracy in the Netherlands, 2nd edition, 1975; Arend Lijphart, Democracy in Plural Societies: A Comparative Exploration, New Haven, Connecticut: Yale University Press, 1977.

4. Lijphart, Democracy in Plural Societies, pp. 25-44.

5. Donald L. Horowitz, "Patterns of Ethnic Separatism," Comparative Studies in Society and History, vol. 23, no. 2, April 1981, p. 175. See also A. H. Birch, "Minority Nationalist Movements and Theories of Political Integration," World Politics, vol. 30, no. 3, April 1978, pp. 325-44 (cited in Horowitz).

6. Jean-Jacques Rousseau, The Social Contract and Discourses, translated with an introduction by G.D.H. Cole, New York: E. P. Dutton and Co., Inc., 1950, p. 27.

7. B. J. Dudley, "Federalism and the Balance of Political Power in Nigeria," Journal of Commonwealth Political Studies, vol. IV, no. 1 (March 1966), p. 20.

8. Lijphart, Democracy in Plural Societies, pp. 41-44.

9. Vernon Van Dyke, "The Individual, the State, and Ethnic Communities in Political Theory," World Politics, vol. 29, April 1977, p. 344.

10. L. Adele Jinadu, "The Constitutional Situation of the Nigerian States," Publius: The Journal of Federalism, 12 (Winter 1982), p. 158.

11. Horowitz, op. cit., pp. 167-68.

12. R. L. Watts, New Federations: Experiments in the Commonwealth, London: Oxford University Press, 1966, p. 274.

13. 1960 Constitution, Sections 100-101; 1963 Constitution, Sections 107-108.

14. Alhaji S. Musa, "Nigerian Public Administration Under the Presidential Government System: Development at the Federal Level," paper read at National Conference in 20 years of Nigerian Public Administration, 1960-1980, University of Ife, Nigeria, October 14, 1980.

15. Ibid., p. 16.

16. Ibid., pp. 17-18.

17. Robin Luckham, The Nigerian Military: A Sociological Analysis of Authority and Revolt, 1960-67, London: Cambridge University Press, 1971.

18. On this, see for example, K.W.J. Post, "Modern Education and Politics in Nigeria," in Hans N. Weiler (ed.), Education and Politics in Nigeria, Freiburg im Breisgau: Verlag Romabach and Co., n.d., pp. 139-47.

19. Cf. G. Ramanathan, Educational Planning and National Integration, Bombay: Asia Publishing House, 1965, chap. 3; Frohock, Public Policy, chap. 7, passim.

20. Information gathered from interviews with a number of officials of Federal Ministry of Education, Lagos, May 1982.

21. J. S. Attah, "Federal Character and National Educational Policy," paper presented at seminar, "Federal Character and National Integration," held at the National Institute for Policy and Strategic Studies, July 1-4, 1980, Kuru, p. 10.

22. Benoni Briggs, "Federal Character and Higher Education in Nigeria," paper presented at seminar, "Federal Character and National Integration," Kuru, pp. 9 and 15.

23. The information is abstracted from a recent circular on the subject. I am grateful to the source of the information.

24. For a recent Nigerian debate on the controversy, see the cover story in Times-International, Lagos, Nigeria, vol. 3, no. 35, Monday 17-Sunday, May 23, 1982, pp. 4-8, captioned "Federal Character in Nigerian Politics." For some of the ethical and political aspects of the debate, see also P. O. Bodunrin, "Ethnic Balancing and Social Justice," in mimeo; O. Nnoli, "Cultural Pluralism and Human Rights Education in Nigeria," in L. Adele Jinadu and U. Ivowi (eds.), Human Rights Education in Nigeria, Lagos, Nigeria: Nigeria National Commission for UNESCO, 1982, chap. 6.